SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI HANDED DOWN JUNE 1, 2010

Jackson v. State, No. 2009-KA-00606-COA (Miss.App. June 1, 2010)

CRIME: Aggravated Assault
SENTENCE: 20 years with 5 suspended and 5 years PRS

COURT: Pike County Circuit Court
TRIAL JUDGE: Hon. David Strong, Jr.

APPELLANT ATTORNEY: Ben Suber
APPELLEE ATTORNEY: Deirdre Mccrory
DISTRICT ATTORNEY: Dee Bates

DISPOSITION: Affirmed. Roberts, J., for the Court. King, C.J., Lee and Myers, PJJ., Irving, Griffis, Barnes, Ishee and Maxwell, JJ., Concur. Carlton, J., Not Participating.

ISSUES:(1) Ineffective assistance of counsel because counsel did not request a lesser-included-offense instruction on simple assault, and (2) that the jury's verdict was against the overwhelming weight of the evidence.

FACTS: On August 8, 2008, Willie and Tomeka Hayes encountered Ricky M. Jackson in the Walmart store located in McComb. Willie had once been friends with Jackson, but for unknown reasons, the friendship deteriorated. Keeping a watch out for Jackson, Willie and Tomeka continued to shop. At one point, Jackson appeared near a clothes rack and leaned in near Willie like he wanted to say something. Willie testified Jackson spit in his face and stabbed him in the face with a wooden stick. Jackson then left. Willie later had a wooden stick removed from his cheek below his right eye. Jackson testified that Willie attempted to spit on him. Jackson also claimed that he did not stab Willie in the face with a wooden stick. According to Jackson, Willie attempted to hit him multiple times, but Jackson blocked each attempt. Jackson could not explain how a stick managed to become lodged in Willie's face.

HELD: The record does not show ineffective assistance of counsel. The failure to request a lesser included instruction on simple assault could have been trial strategy. Jackson can raise the issue again on PCR.

==> The verdict was not against the weight of the evidence. Willie and Tomeka both testified that Jackson approached Willie and, unprovoked, spit in Willie's face and then stabbed him in the face with a wooden stick. The ER physician testified that Willie's injury was "severe" and that it could have been "potentially fatal." The wound was near Willie's "orbital rim, the bottom of [the] eye socket." Such an injury could have "caused instant blindness" and that "it could have been fatal."

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63294.pdf

Bruce v. State, No. 2008-KA-01748-COA (Miss.App. June 1, 2010)

CRIME: 2 Counts Drive-By Shooting
SENTENCE: 12 years on each count

COURT: Coahoma County Circuit Court
TRIAL JUDGE: Hon. Kenneth Thomas

APPELLANT ATTORNEY: Cheryl Ann Webster
APPELLEE ATTORNEY: John R. Henry, Jr.
DISTRICT ATTORNEY: Brenda Fay Mitchell

DISPOSITION: Affirmed. Griffis, J., for the Court. King, C.J., Lee and Myers, P.JJ., Irving, Barnes, Ishee, Roberts and Maxwell, JJ., Concur. Carlton, J., Not Participating.

ISSUES: (1) that the trial judge erred in admitting evidence about the car wreck which occurred after the alleged drive-by shooting, (2) that the court erred in admitting photographs of the bullet holes in the victim's car, (3) that the court erred in admitting a prior statement made by Bruce, and (4) that the court erred in excluding Bruce's grandmother's testimony about his character.

FACTS: On December 6, 2005, Archie Bruce was driving his Ford Explorer when he pulled into the left turn lane next to a Ford Taurus. The Taurus was driven by Anthony Allen and Tracy Wide was a passenger. Bruce and Wide were formally in a relationship and Bruce had purchased the Taurus for her. They also had 3 children together and Wide was currently pregnant with a fourth. (Interestingly, Wide and Bruce married shortly before trial). Bruce claimed that Allen turned his head toward Bruce, and it scared him. He grabbed his pistol and pointed it toward the Taurus. He then fired two shots out of his passenger window at the Taurus. After the shots were fired, Allen made a right turn. Bruce followed. Allen spotted a police officer and attempted to waive the officer down. Allen let his foot off the accelerator, and Bruce's Ford Explorer collided with the rear of the Taurus. The Taurus ran off the road and struck a tree. The officer witnessed Bruce following closely behind the Taurus. He saw the collision of Bruce's Explorer and the Taurus. Bruce later gave a statement to police.

HELD: Bruce claimed that evidence of the car wreck and photographs of a broken windshield were not relevant and violated MRE 404(b). The COA found that the trial court did not abuse his discretion in allowing evidence of the wreck as "part of that continuous transaction of events that took place." Allowing the evidence did not cause undue prejudice.

==>Bruce failed to make a clear showing of how admitting the photographs of the bullet holes in the Taurus would cause him undue prejudice. The photos corroborated Allen's testimony which was that Bruce fired gunshots at Wide and him.

==>The trial judge did not err in admitting Bruce's statement to police. Bruce claimed it was incomplete. The mere fact that Bruce disputes the content of the statement is not a sufficient basis to exclude it. Bruce signed the statement after reading it. From the record, there was sufficient support for the trial court's conclusion that the statement was, in fact, complete and voluntary.

==>The trial court could have admitted the grandmother's testimony as to Bruce's reputation. However, any error in failing to allow the testimony was harmless when compared to the overwhelming evidence of guilt contained elsewhere in the record.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63284.pdf

Conway v. State, No. 2009-CA-00886-COA, consolidated with No. 2003-CT-02807-COA (Miss.App. June 1, 2010)

CRIME: PCR – Murder
SENTENCE: Life

COURT: Forrest County Circuit Court
TRIAL JUDGE: Hon. Robert B. Helfrich

APPELLANT ATTORNEY: Edwin Lloyd Pittman, Jonathan Michael Farris
APPELLEE ATTORNEY: Deirdre McCrory

DISPOSITION: Denial of PCR affirmed. Roberts, J., for the Court. King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Maxwell, JJ., Concur. Carlton, J., Not Participating.

ISSUES: (1) Whether Conway received ineffective assistance of counsel during his criminal trial; (2) Whether Conway received ineffective assistance of counsel during his appeal; (3) Whether Conway was denied a fair trial; and (4) Whether Conway was denied procedural due process.

FACTS: Derek Brandon Conway was convicted of the 2002 murder of Kenneth Ray Mooney. Conway was a friend of Joseph Jansen. However, he was told by several friends that Jansen was sleeping with Conway's wife. (Conway and his wife had separated). Jansen denied the allegations and claimed he eventually talked the situation over with Conway and that Conway believed him. On July 4, 2002, Conway and a friend were at a carwash. They had taken crystal meth earlier in the evening. Mooney drove up to a convenience store next to the carwash. Jansen and another friend were with him. They were told Conway was at the carwash. They drove over to the carwash. Mooney was in the passenger seat and Jansen was in the middle. They began staring at Conway and laughing. Conway took out a mag light and walked over to the truck. Jansen tried to get out but Mooney would not let him. Conway then hit Mooney in the head with the mag light. He stated he was scared they were about to do something to him. Conway and Jansen argued about whether Jansen was sleeping with his wife. Conway claimed Mooney was about to hit him with a beer bottle. Conway then pulled out a gun and shot Mooney. Conway's conviction was affirmed in 2005. He was granted leave in 2007 to file a PCR which was denied. Conway appealed. The case was also consolidated with a request of enlargement of time to file a reconsideration of the direct appeal seeking a certiorari review of the case.

HELD: Conway was not denied effective assistance at trial. He claimed his counsel (1) failed to adequately prepare for Conway's trial; (2) failed to renew his motion to exclude evidence provided by the State; (3) failed to move for a mistrial after learning that a juror had failed to inform the court

that she knew Conway's mother; and (4) failed to object to the qualifications of the State's expert witness.

==> Conway has failed to show deficient performance by his trial counsel which prejudiced his case. On direct appeal, the COA found admission of the videotape to be harmless error. Counsel did object to the tape at trial. Conway cannot show that his trial counsel's failure to renew his motion for a continuance was deficient.

==>Regarding the juror who knew Conway's mother, counsel's failure to object to a relationship that was not disclosed and was not brought to his attention can hardly be called deficient performance. Finally, counsel was not ineffective for failing to object to Dr. Hayne's qualifications as an expert. There is nothing in the record to indicate that Conway's trial counsel's decision not to object during Dr. Hayne's voir dire was nothing more than trial strategy. Counsel did object when Dr. Hayne was asked about the positions of the parties at the time of the shooting. This objection was overruled. Conway suffered no prejudice

==>Conway failed to show that had appellate counsel timely filed a motion for rehearing, the case would have reversed. Therefore, as Conway has failed to show that there was an arguable basis upon which to file a motion for rehearing, he can neither demonstrate that his appellate counsel was deficient, nor that he suffered any prejudice as a result.

==>Conway argues that he was denied a fair trial as a result of witness and juror misconduct. Conway submitted affidavits generally stating that witnesses for both sides were able to, and did, converse with each other during the trial. However, the affidavits lacked any mention of what was discussed other than Conway's unsupported claim of prejudice. A technical violation of MRE 615 is harmless where the violation did not adversely affect the defendant

==>Regarding a juror's failure to disclose that she knew Conway's mother, the court could find no prejudice in the record. The record indicates the trial court held a hearing on the matter. Conway failed to allege any animosity between the juror and his mother. "We cannot say that [the juror's] failure to identify her familiarity with [Conway's mother], and subsequent selection as a juror, prejudiced Conway."

==>Conway claimed that the supreme court erred by denying his cert petition as he was denied "his procedural due[-]process rights under federal and state law." However, MRAP Rule 17(a) states, in pertinent part, that "[r]eview on writ of certiorari is not a matter of right, but a matter of judicial discretion." There simply is no right to review on a writ of certiorari.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63399.pdf

Pruitt v. State, No. 2008-CP-01716-COA (Miss.App. June 1, 2010)

CRIME: Sexual Battery, Aggravated Assault, and Kidnapping
SENTENCE: Life plus 50 years

COURT: Marshall County Circuit Court
TRIAL JUDGE: Hon. Andrew K. Howorth

APPELLANT ATTORNEY: Michael W. Pruitt (Pro Se)
APPELLEE ATTORNEY: Laura Hogan Tedder

DISPOSITION: Denial of PCR affirmed. King, C.J., for the Court. Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee, Roberts, Carlton and Maxwell, JJ., Concur.

ISSUES: (1) Whether his guilty pleas were involuntary, and (2) Whether he received ineffective assistance of counsel.

FACTS: Michael W. Pruitt pled guilty in March of 2007. During the guilty plea proceeding, the State represented that had the case gone to trial, it would prove that Pruitt kidnapped a six-year-old girl, fondled her, and attempted to have sexual intercourse with her. Pruitt took the child to an abandoned house where he shot her once in the head. After questioning, Pruitt confessed to the crime and led police to the victim, who was found alive. Pruitt acknowledged to the trial court that the information alleged by the State was in fact true. He also acknowledged that he understood the consequences of his guilty pleas and stated his pleas were voluntary. He also stated that he was satisfied with his trial counsel's representation. On May 9, 2008, Pruitt filed a motion for post-conviction relief. The petition was denied on September 24, 2008, and Pruitt appealed.

HELD: Pruitt claimed that he was under the influence of anti-depressants when the crime took place and during the guilty plea proceeding. Pruitt submitted affidavits on appeal that were not presented to the trial court. These affidavits were not considered. Pruitt provided the trial court with a copy of two prescriptions for anti-depressants, which were filled on June 20, 2006. Besides this, Pruitt failed to provide the trial court with any other evidence to support his argument that the medication affected his competency. At the plea, Pruitt stated he was not under the influence of any drug. The trial judge did not err in denying relief.

==>Pruitt further asserted that he was coerced to plead guilty by his trial counsel and the district attorney, who Pruitt alleged arrested his family and threatened to charge them as accessories after the fact if he did not plead guilty. During the plea, Pruitt denied he was coerced into pleading guilty. The record contains no evidence to suggest that Pruitt's guilty pleas were involuntary.

==>Pruitt was not denied effective assistance of counsel. Pruitt argues that his trial counsel failed to tell him that he was suspended from practicing law in Tennessee. Pruitt maintains that if he had known about his trial counsel's suspension, he would have requested the trial court to appoint him another attorney. However, Pruitt pled guilty long before his counsel was suspended in Mississippi. Pruitt fails to articulate how he was adversely affected by his counsel's suspension in Tennessee.

==>Pruitt also made miscellaneous claims of ineffective assistance of counsel, including that his trial counsel failed to investigate the case. The plea hearing contradicts all of Pruitt's assertions. At the hearing, Pruitt affirmed that he was satisfied with his trial counsel's representation, that trial counsel visited him while he was incarcerated and discussed the case, that counsel contacted the witnesses Pruitt provided to him, and that it was his decision alone to enter the guilty pleas.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62124.pdf

Ryals v. State, No. 2009-CP-00839-COA (Miss.App. June 1, 2010)

CRIME: PCR – Capital Murder
SENTENCE: Life

COURT: Forrest County Circuit Court
TRIAL JUDGE: Hon. Lisa Dodson

APPELLANT ATTORNEY: Ricky Ryals (Pro Se)
APPELLEE ATTORNEY: Ladonna C. Holland

DISPOSITION: Dismissal of PCR affirmed. King, C.J., for the Court. Lee and Myers, P.JJ., Griffis, Barnes, Ishee, Roberts, Carlton and Maxwell, JJ., Concur. Irving, J., Concurs in Part and in the Result.

ISSUES: (1) Whether the trial court erred in summarily dismissing the PCR, (2) Whether the trial court erred in denying the motion to amend Ryals's pleadings, (3) Whether the trial court erred in dismissing the PCR under an erroneous standard of review, (4) Whether the trial court erred in finding Ryals's guilty plea was voluntary, (5) Whether Ryals was denied effective assistance of counsel, and (6) whether the trial court erred in limiting the appellate record to those pleadings and orders necessary for review of the court's dismissal of Ryals's PCR.

FACTS: Ricky Ryals pled guilty to the capital murder of his wife on June 30, 1998. On June 25, 2001, Ryals filed his first PCR. The trial court denied relief on January 18, 2003, and the COA affirmed in 2004. On July 23, 2008, Ryals filed a second motion to vacate and set aside his conviction and sentence. On May 1, 2009, the trial court dismissed his motion for post-conviction relief. Ryals appealed again.

HELD: The trial court did not err in summarily dismissing Ryals's motion for post-conviction relief. Ryals's PCR presently before the Court is barred as a successive writ. Ryals also raised three issues in his second PCR that were not raised in his first motion. Because the three new issues do not fall within the purview of the grounds for post-conviction relief, and they could have been raised in Ryals's first motion for post-conviction relief, we find that Ryals is procedurally barred from raising them now.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCCO61985.pdf

Also of Note:

Brumfield v. State, No. 2009-CA-00579-COA (Miss.App. June 1, 2010)

CRIME: First Degree Arson
SENTENCE: Not Guilty by reason of insanity; committed to the state hospital

COURT: Walthall County Circuit Court
TRIAL JUDGE: Hon. David Strong, Jr.

APPELLANT ATTORNEY: F. Kay Hardage, Carol F. Thweatt
APPELLEE ATTORNEY: Stephanie Breland Wood

DISPOSITION: Denial of conditional release reversed and remanded. Maxwell, J., for the Court. King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Roberts, JJ., Concur. Carlton, J., Not Participating.

ISSUES: (1) Whether the circuit court erred in denying the petition when it did not make a finding that Brumfield was a danger to the community, and (2) Whether a person acquitted by reason of insanity may be held indefinitely at the state hospital when he is no longer a danger to the community.

FACTS: Clark David Brumfield was found not guilty by reason of insanity of first-degree arson in 2004. The indictment alleged that Brumfield burned the home of Linda Hightower, his girlfriend at the time. Brumfield set fire to Hightower's house while she was inside, although she was able to escape uninjured. Apparently Brumfield's conduct was a result of his belief that, among other things, "'spirits' within [Hightower] were having sex with her." Further, the State alleged Brumfield's actions were routinely governed by "voices." On November 5, 2007, the state hospital, on behalf of Brumfield, filed a petition in the circuit court for conditional release. The only testimony at the hearing came from Brumfield's treating physician, Dr. Sondra F. Holly, and Brumfield's mother. Dr. Holly testified that Brumfield had worked at the state hospital and successfully completed a behavioral program. Dr. Holly had given Brumfield regular passes to leave the state hospital, and there had been no problems reported. In her opinion, Brumfield was not a danger to himself or the community. Brumfield's mother testified that if Brumfield were released, he could live in her home. She claimed that she would assume responsibility for ensuring Brumfield took his medication and attended his appointments. On February 11, 2009, the circuit court entered an order denying the state hospital's petition and ordering that Brumfield continue to be retained. The order did not include a finding as to whether Brumfield had regained his sanity or whether he was a danger to the community. Brumfield appealed.

HELD: Until recently, Mississippi had no statutory procedure for considering the release of a defendant confined to a psychiatric hospital *after* being found not guilty by reason of insanity but still a danger to the community. During the pendency of this appeal, the Mississippi Legislature amended section 99-13-7 to include such a procedure.

==> The circuit court made no findings as to whether Brumfield had been restored to his sanity or was no longer dangerous. Rather, the court denied the state hospital's petition for conditional release without explanation and ordered Brumfield to be retained at the state hospital. The circuit court should be provided an opportunity to provide findings in light of the new framework adopted by our Legislature in 2010, which is to be codified as §99-13-7(2).

==>The Court also noted its concern with whether the procedure outlined in §99-13-7(2) complies with the due-process requirements set forth by the United States Supreme Court. However, the constitutionality of §99-13-7, as amended, was not been raised by either party. Although the Court declined to address the issue, it hinted that this issue should be addressed on remand.

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63576.pdf